

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ROY DOLLEN,

Defendant-Appellant.

UNPUBLISHED
February 22, 2005

No. 251404
Wayne Circuit Court
LC No. 03-005966-01

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and was sentenced to twenty-seven months to ten years' imprisonment. He appeals as of right. We affirm.

Defendant argues the trial court erred in admitting a videotape of the altercation between him and the complainant because the videotape did not show the entire incident. Because defendant did not preserve this issue by objecting to the videotape below, we review for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant cites no authority supporting the notion that a videotape of a crime is inadmissible unless it shows "the entire transaction." His reliance on *People v Riley*, 67 Mich App 320, 322; 240 NW2d 787 (1976), rev'd on other grounds, 406 Mich 1016 (1979), is misplaced because *Riley* merely indicates that the proper foundation for admission of a photograph is testimony by an individual familiar with the scene and that it accurately reflects the scene photographed.

The proper foundation for admissibility of evidence is governed by MRE 901(a), which states:

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

See *People v Berkey*, 437 Mich 40, 50; 467 NW2d 6 (1991) (audio tapes); *People v Hack*, 219 Mich App 299, 308-310; 556 NW2d 187 (1996) (videotape).

In *Berkey, supra* at 52, the Court observed:

It is axiomatic that proposed evidence need not tell the whole story of a case, nor need it be free of weakness or doubt. It need only meet the minimum requirements for admissibility. Beyond that, our system trusts the finder of fact to sift through the evidence and weigh it properly.

Here, a foundation for admission of the videotape was established by the testimony of the store manager, who stated that the tape was the one he turned over to the police. The prosecution presented sufficient evidence “to support a finding that the matter in question is what its proponent claims.” MRE 901; *Berkey, supra* at 50-52.

Defendant also claims that the videotape was inadmissible pursuant to MRE 403. Because this was a bench trial, “it is unlikely that the court would consider the evidence for anything other than the proper purpose for which it was offered.” *People v Bailey*, 175 Mich App 743, 746; 438 NW2d 344 (1989). Indeed, the trial court’s findings indicate that the court recognized that the videotape did not capture the entire incident. Although the court determined that defendant initiated the fight and acted with intent to cause great bodily harm, it reached these findings on the basis of witness testimony, as well as the videotape.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio